

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

MARGARET SHERMAN, et al.,

Plaintiffs,

vs.

SUNSONG AMERICA, et al.,

Defendants.

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8:04CV300

ORDER

This matter is before the court on the motion of defendants Winco Fireworks, Inc. and Winco Fireworks International, LLC (together, "Winco") for leave to file and serve a third-party complaint (#53). Response time has passed, and the court has not received any response in opposition to the motion.

Under Fed. R. Civ. P. 14(a), "a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff." The Winco defendants allege that they are entitled to indemnity and/or contribution from third-parties Stanley Kapustka and Laura Kapustka ("Kapustkas"); Robert D. Hale, Jane Hale, Lucas Hale, R. Mitchell Hale and Suzyn Hale d/b/a Hale's Fireworks ("Hales"); and Hale Fireworks, LLC should Winco be found liable for damages to the plaintiffs ("Shermans").

For jurisdictional purposes, the Winco defendants reside in the State of Kansas. The proposed third-party complaint alleges that Kapustkas reside in the State of Nebraska and

that Hales and Hale LLC reside in the State of Missouri. The proposed third-party complaint does not destroy diversity of citizenship, *see Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365 (1978). Should the amount in controversy fail to exceed \$75,000, *see* 28 U.S.C. § 1332(a), this court may exercise supplemental jurisdiction over the third-party complaint pursuant to 28 U.S.C. § 1367.

Considering these factors, and in the absence of any affirmative objection from any other party, I find that the motion should be granted.

IT IS ORDERED:

1. The motion of defendants Winco Fireworks, Inc. and Winco Fireworks International, LLC for leave to file and serve a third-party complaint (#53) is granted.
2. The third-party complaint shall be filed on or before **June 15, 2005** and shall be served on the third-party defendants forthwith.

DATED June 9, 2005.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**